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Elections to fill vacancies in principal organs: election of five members of the International Court of Justice

Security Council
Seventy-third year

Election of a member of the International Court of Justice

Memorandum by the Secretary-General

I. Introduction

1. By a letter dated 6 February 2018, a copy of which was forwarded to the attention of the Secretary-General under the cover of a letter of 6 February 2018 from the President of the International Court of Justice, Judge Hisashi Owada (Japan) informed the President of the Court, pursuant to Article 13, paragraph 4, of the Statute of the Court, of his resignation as a member of the Court, effective 7 June 2018. Therefore, a vacancy in the Court will occur on 7 June 2018, to be filled by election in accordance with the provisions of the Statute of the Court.

2. According to Article 14 of the Statute of the Court, the vacancy shall be filled by the same method as that laid down for the regular election, and the Secretary-General shall, within one month of the occurrence of the vacancy, issue the invitations for nominations provided for in Article 5 of the Statute. According to Article 5, paragraph 1, of the Statute, the invitations for nominations shall be made at least three months before the date of the election, which, pursuant to Article 14, shall be fixed by the Security Council.

3. By a note dated 19 February 2018 addressed to the Security Council (S/2018/133), the Secretary-General informed the Council of the resignation of Judge Owada and drew its attention to Article 14 of the Statute of the Court with regard to the fixing of the date of the election. Pursuant to that Article, the Council decided, by its resolution 2403 (2018), adopted on 28 February 2018, that the election to fill the vacancy would take place on 22 June 2018 at a meeting of the Council and at a meeting of the General Assembly at its seventy-second session.

4. Pursuant to Article 5, paragraph 1, of the Statute of the Court, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, in communications dated 23 February 2018 and on behalf of the Secretary-General, invited the national groups of States parties to the Statute to undertake the nomination of persons in a position to accept the duties of a member of the Court. The Legal

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Counsel further requested that nominations be received no later than 16 May 2018. The list of nominations received by that date and the curriculum vitae of the candidate are transmitted in separate notes by the Secretary-General, issued as documents of the General Assembly and the Security Council (A/72/873-S/2018/488 and A/72/874-S/2018/489, respectively). The name of the candidate will thus appear on the ballot papers to be distributed during the election in both organs.

5. The resigning Judge Owada has been a member of the Court since 6 February 2003. Judge Owada was re-elected as from 6 February 2012 and served as President of the Court from 6 February 2009 to 5 February 2012. His current term of office would have expired on 5 February 2021.

6. Article 15 of the Statute of the Court provides that a member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of the predecessor's term. Thus, the newly elected member would serve until 5 February 2021. The term of the newly elected judge will commence on the date on which the individual is elected by the General Assembly and the Security Council.

II. Composition of the International Court of Justice

7. The present composition of the International Court of Justice is as follows:

President:
Abdulqawi Ahmed Yusuf (Somalia)***

Vice-President:
Xue Hanqin (China)*

Judges:
Hisashi Owada (Japan)****
Peter Tomka (Slovakia)*
Ronny Abraham (France)***
Mohamed Bennouna (Morocco)**
Antônio Augusto Cançado Trindade (Brazil)***
Joan E. Donoghue (United States of America)**
Giorgio Gaja (Italy)*
Julia Sebutinde (Uganda)*
Dalveer Bhandari (India)***
Patrick Lipton Robinson (Jamaica)**
James Richard Crawford (Australia)**
Kirill Gevorgian (Russian Federation)**
Nawaf Salam (Lebanon)***

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* Term of office expires on 5 February 2021.

** Term of office expires on 5 February 2024.

*** Term of office expires on 5 February 2027.

**** Term of office would have expired on 5 February 2021.

III. Procedure in the General Assembly and in the Security Council

8. The election will take place in accordance with the following provisions, as applied to the present situation when only one candidate has been nominated:

(a) The Statute of the Court, in particular Articles 2 to 4, 7 to 10 and 14;

(b) Rules 150 and 151 of the rules of procedure of the General Assembly;

(c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.

9. On the date of the election, the General Assembly and the Security Council will proceed, independently of one another, to elect one member of the Court to fill the vacancy (Art. 8 of the Statute).

10. According to Article 2 of the Statute of the Court, members of the Court are to be elected, regardless of their nationality, from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. Article 9 requires electors to bear in mind not only that the person to be elected should individually possess the qualifications required, but also that, in the body as a whole, the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

11. To be elected, the candidate must obtain an absolute majority of votes both in the General Assembly and in the Security Council (Art. 10, para. 1, of the Statute).

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly are all 193 Member States. Accordingly, as at the date of the present memorandum, 97 votes constituted an absolute majority in the Assembly for the purpose of the present election.

13. In the Security Council, eight votes constitute an absolute majority and no distinction is made between permanent and non-permanent members of the Council (Art. 10, para. 2, of the Statute).

14. For the present election, only the one candidate whose name appears in document A/72/873-S/2018/488 is eligible. Therefore, only that name will appear on the ballot paper. The electors in the General Assembly and in the Security Council shall indicate if they wish to vote for the candidate by placing a cross against the name on the ballot paper. In accordance with Articles 5 and 7 of the Statute, no additional candidates may be nominated on the day of the elections.

15. At the 915th plenary meeting of the General Assembly, on 16 November 1960, a procedural discussion took place as to whether rule 94 (then rule 96) of the rules of procedure of the Assembly should be applied in elections to the International Court of Justice. That rule lays down a procedure for restricted ballots in the event that, after the first ballot, the requisite number of candidates have not obtained the required majority. The Assembly decided that the rule did not apply to elections to the Court and proceeded to elect the requisite number of candidates by a series of unrestricted ballots. That decision has been followed consistently.

16. Accordingly, if, in the first ballot in either the General Assembly or the Security Council, the candidate does not receive an absolute majority, a second ballot will be held and balloting will continue in the same meeting until the candidate has obtained the absolute majority (rule 151 of the rules of procedure of the Assembly and rule 61 of the provisional rules of procedure of the Council).

17. When a candidate has obtained the absolute majority in one of the organs, the President of that organ will notify the President of the other organ accordingly. Such notification will not be communicated by the President of the second organ to its members until the candidate receives the absolute majority of votes in that second organ.

18. Upon the exchange of notifications between the two organs informing each other that the candidate has received the absolute majority in both the General Assembly and the Security Council, each organ will announce that the candidate has been elected.

19. The first meeting held for the purpose of the election, as referred to in Article 11 of the Statute of the Court, will be adjourned upon the exchange of notifications and the announcement of the results in both organs. Taking into account the specific circumstances of the present situation, in which only one candidate has been nominated for election, it is expected that only one meeting within the meaning of Article 11 will be held.